

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LANCIE THOMPSON and DARA SINGH,

Plaintiffs,

v.

SAFETY-KLEEN SYSTEMS, INC., *et al.*,

Defendants.

No. C06-1270RSL

ORDER GRANTING PLAINTIFF
SINGH'S MOTION FOR
VOLUNTARY NONSUIT

I. INTRODUCTION

This matter comes before the Court on "Plaintiff Dara Singh's Motion for Voluntary Nonsuit" (Dkt. #48). In his motion, plaintiff Singh requests dismissal of his claims under Fed. R. Civ. P. 41(a)(2) without prejudice for medical reasons. Defendants oppose plaintiff's motion and request dismissal of plaintiff's claims with prejudice and an award of attorney's fees and costs for defending against plaintiff's claims. See Dkt. #60 (Response). For the reasons discussed below, the Court grants plaintiff's motion for voluntary dismissal.

II. DISCUSSION

Plaintiff moves for dismissal under Fed. R. Civ. P. 41(a)(2), which states:

[A]n action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a

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1 dismissal under this paragraph is without prejudice.

2 Fed. R. Civ. P. 41(a)(2). The decision to grant the motion to dismiss rests within the discretion
3 of the court. Sams v. Beech Aircraft Corp., 625 F.2d 273, 277 (9th Cir. 1980). “A dismissal
4 under Rule 41(a)(2) normally is without prejudice, as explicitly stated in that rule.” Smith v.
5 Lenches, 263 F.3d 972, 976 (9th Cir. 2001).

6 “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless
7 a defendant can show that it will suffer some plain legal prejudice as a result.” Id. at 975. The
8 Ninth Circuit defines plain legal prejudice as “just that - prejudice to some legal interest, some
9 legal claim, some legal argument.” Westlands Water Dist. v. United States, 100 F.3d 94, 97 (9th
10 Cir. 1996). “[T]he expense incurred in defending against a lawsuit does not amount to legal
11 prejudice.” Id. In this case, defendants have not asserted counterclaims and the Court finds that
12 defendants have not identified any legal prejudice that will result from plaintiff’s dismissal.
13 While in their opposition defendants seek to “hold Plaintiff Singh accountable” for the
14 “multitude of proceedings which he initiated and against which he has forced Defendants to
15 defend,” this, by itself, does not constitute legal prejudice. See Response at 4, ¶12.

16 To protect a defendant, however, the district court may include terms and conditions with
17 a voluntary dismissal. Westlands Water Dist., 100 F.3d at 97. Although costs and attorney’s
18 fees are often imposed upon a plaintiff who is granted a voluntary dismissal under Rule 41(a)(2),
19 payment of the defendant’s costs and attorney’s fees is not a prerequisite to an order granting
20 voluntary dismissal. Stevedoring Serv. of Am. v. Armilla Int’l B.V., 889 F.2d 919, 921 (9th
21 Cir. 1989). In this case, the Court does not attach conditions to the voluntary dismissal. In their
22 response, defendants seek recovery of reasonable expenses, in part, because plaintiff failed to
23 appear for his deposition on June 7, 2007 and because defendants allege that plaintiff failed to
24 fully and timely produce discovery responses under the Court’s May 25, 2007 Order. See
25 Response at ¶¶5, 6, 12; Dkt. #23. The Court, however, has already addressed these issues in its

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1 “Order Granting In Part and Denying In Part Defendants’ Motion for Sanctions Against Plaintiff
2 Singh,” where the Court concluded that an award of reasonable expenses was appropriate
3 because of plaintiff’s failure to attend his deposition. As plaintiff notes in his reply, “[i]t should
4 be noted that defense fees and costs are not awarded to defendants who prevail, on the merits, in
5 cases brought under the state and federal employment discrimination statutes except in
6 extraordinary circumstances and where defendant demonstrates that the case was ‘frivolous.’”
7 Reply at 3 n.1 (emphasis in original). While in Stevedoring, the Ninth Circuit addressed a
8 similar argument and ultimately concluded that “no court has refused an award of costs and
9 attorney fees under Fed. R. Civ. P. 41(a)(2) on this basis alone,” the Court here weighs this
10 consideration as a factor in declining to impose conditions to dismissal in this case.
11 Stevedoring, 889 F.2d at 921 (emphasis added). For these reasons, because the Court has
12 already sanctioned plaintiff for conduct addressed in defendants’ response, the Court in its
13 discretion here declines to attach additional conditions upon dismissal.

14 III. CONCLUSION

15 For all of the foregoing reasons, the Court GRANTS “Plaintiff Dara Singh’s Motion for
16 Voluntary Nonsuit” (Dkt. #48). Plaintiff’s claims are dismissed without prejudice and without
17 terms or conditions.

18 DATED this 28th day of August, 2007.

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22 Robert S. Lasnik
23 United States District Judge
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